IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.16 OF 2006

Prabhu Singh Walia : Applicant

versus

The Union of India & ors. : Respondents.

Mr.H.D.Dharmadhikari with Mr.Shahid Azmi & Rainu Bhatt for the applicant.

Mr.R.J.Rana with Mr.H.V.Mehta for Respondent No.1-Union of India.

Mr.S.s.Tatkare, APP, for the State/Respondent.

CORAM : V.M.KANADE, J.

DATED : 10th February 2006.

ORAL ORDER

1. The applicant is seeking anticipatory bail since he has an apprehension that he is likely to be arrested by Respondent No.2-Commissioner of Central Excise (Thane-I) in connection with an offence which is registered

under Section 9 of the Central Excise and SALT Act. It is alleged that the applicant is the partner in a firm which is known as Hi-Tech Fabric Processors which is situated at Thane. It is also alleged that he is the President of New Textile Processor's Association, Thane since 1998. It is submitted that the applicant is an active social worker and a crusader against bribe and corruption. It is stated that the organization of the applicant was instrumental in fighting against the compounded levy on textile industry which was subsequently cancelled by the Central Government. It is alleged that the officers of Central Excise, Thane searched the premises of the applicant and, the records and the premises were seized by them on 6.8.2003. The allegation against the applicant was that the applicant was evading excise duty and was clandestinely removed the goods from his factory. It is alleged that the applicant was called to the office of the department to explain the transaction of the firm on more than 16 occasions. It is stated that the applicant made allegations against the investigating officers of the department that they had demanded bribe and accordingly his statement was recorded on

3.11.2003, after he had sent a letter dated 3.10.2003. It is alleged that the applicant had made similar complaint by his letter dated 13.08.2003. It is alleged that the officers of Respondent No.2 are harassing the applicant and are demanding custodial interrogation on account of the letters which have been written by him. It is submitted that in respect of the alleged evasion of duty, he has already paid the entire amount of fine to the tune of Rs.Two lakhs. The learned counsel appearing on behalf of the applicant submitted that, therefore, this is a fit case for grant of anticipatory bail.

2. Mr.Rana, the learned Senior Counsel appearing on behalf of the Union of India, on the other hand, submitted that the allegations which are made by the applicant in his complaint are entirely unfounded. He has invited my attention to the affidavit-in-reply filed by the officer of Respondent No.2 and also to the affidavit filed by the Commissioner. He submitted that after the initial raid was conducted, it was brought to the notice of the officers that over and above the evasion of duty which was initially noticed, the record found in the raid indicated a huge racket

of evasion of duty. The record which was seized indicated that there was large scale evasion of duty to the tune of of Rs.Five to Rs.Six crores and, therefore, custodial interrogation of the application was found to be necessary and, therefore, sanction was granted by the Commissioner on 19.12.2005 and on the same day complaint was registered against the applicant. He submitted that, therefore, the submission made by the learned counsel for the applicant that after the applicant had made an application for anticipatory bail, the sanction to prosecute him was obtained, is incorrect and false. He further submitted that though the applicant was summoned on 16 occasions, he had attended the office of Respondent No.2 on only 6 occasions and even after the order was passed by this Court asking the applicant to report to Respondent No.2's office, the applicant did not co-operate with the officers of Respondent No.2. Mr.Rana, the learned senior counsel appearing for the Union of India, has invited my attention to the further affidavit, which has been filed, which indicates that the applicant did not co-operate with the officers of Respondent No.2. He also invited my attention to the statement of applicant which was

recorded by the investigating officer in which he had admitted that certain goods have been clandestinely removed without payment of duty.

3. The learned counsel appearing for the applicant vehemently opposed this submission and submitted that this is not correct. He submitted that the files which were demanded by Respondent No.2 were damaged in the flood in July 2005 and since all the documents were with Respondent No.2, he may be permitted to take xerox copies of the said documents and then reconstruct the entire ledgers.

4. I have heard the learned counsel for the applicant and learned counsel for Respondent Nos.1 and 2 at length. I have given my anxious consideration to the submissions made by both the counsel. In my view, no case is made out for grant of anticipatory bail in the present matter. There is an allegation of evasion of excise duty to the tune of Rs.Five to Rs.Six crores. In the raid which was conducted in 2003 only part of evasion was detected. I have perused the letters which have been written by the applicant to Respondent No.2 in respect of the complaints

against the officers of Excise Department. In the affidavit-in-reply it has been stated that the officers, against whom the allegations were made, have been promptly transferred and, inquiry against them is still going on. It is stated that no concrete evidence has been found regarding the allegations which are made against the said officers. From the record it does appear that the investigation which is being made against the applicant is not merely on account of the complaints which are made by him in his capacity as the President of the said Association, but is made independently on the basis of material which has been found against the applicant.

5. Normally so far as provisions of Central Excise and SALT Act are concerned, by virtue of provision of Section 13(a) of the said Act, the offences which are prescribed under the Act are of non-congnizable offences. However, Section 19 r/w Section 9 of the said Act, the competent authority, if it is satisfied that material does exist regarding commission of offence, then sanction can be granted to prosecute and arrest the accused in such cases and, accordingly such

sanction was granted on 19.12.2005 by Respondent No.2.

6. It, therefore, cannot be said that the investigation which can be proceeded against the applicant is done with a malafide intention or an ulterior motive merely because the complaints have been lodged by him against certain officers of the excise department.

7. The matter has been adjourned from time to time and ample opportunity was given to the applicant to furnish particulars to the department. However, it appears that this investigation has not been proceeded and, in my view, therefore, custodial interrogation of the applicant would be necessary. The submission made by the learned counsel for the applicant, that the entire record was washed away in the flood of July 2005, also appears to be doubtful particularly because this submission is made for the first time practically after six months and at no time this excuse was put forward either before the officers of Respondent No.2 or before this Court. In these circumstances, there is no other option for Respondent No.2 and his officer

but to interrogate the applicant. Looking to the nature of allegations and voluminous documents which have been seized, Respondent No.2 may interrogate the applicant for a period of four days from 18th February 2006. After the period of four days, the applicant be released on bail in the sum of Rs.25,000/- [Rupees Twenty Five thousand only] with one or two sureties in the like amount. The applicant, thereafter, shall report to Respondent No.2 for a period of one week from 22nd February 2006 between 11.00 a.m. to 5.00 p.m. and co-operate with the investigating officer in the investigation. With these directions, the criminal application is disposed of in the above terms.

8. At this stage the learned counsel appearing for the applicant submits that since the applicant is a heart patient, he may be permitted to take medicines which are prescribed by the Doctor and also he may be provided with home food. In my view, considering the age of applicant, this facility may be provided by Respondent No.2.

[V.M.KANADE,J]